

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 4, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fourteen: (530) 406-6941

TENTATIVE RULING

Case: **Barr v. City of Woodland**
Case No. CV CV 09-3070

Hearing Date: **June 4, 2010** **Department Fourteen** **9:00 a.m.**

Plaintiff's motion for leave to file a first amended complaint is unnecessary because on March 11, 2010, this Court gave the plaintiff leave to amend the fifth, sixth and seventh causes of action in her complaint, and the plaintiff timely filed a document which is her first amended complaint. However, the document, the plaintiff filed on March 25, 2010, is not signed. **By June 7, 2010**, the plaintiff shall submit a signed page 8 for the document she filed on March 25, 2010, and such document shall then be deemed the first amended complaint.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Jenkins v. Jack in the Box, Inc.**
Case No. CV PO 09-3097

Hearing Date: **June 4, 2010** **Department Fourteen** **9:00 a.m.**

The demurrer to the first cause of action for malicious prosecution is **OVERRULED**. The complaint alleges that Jonathan Kalista, Edgar Zamora-Martinez and Junalou Lomibao are agents and employees of Jack in the Box, Inc. (Complaint ¶ 11.) The complaint alleges sufficient facts to state a cause of action for malicious prosecution. (Complaint ¶¶ 5 and 11-43.)

The demurrer to the second cause of action for assault and battery is **SUSTAINED WITH LEAVE TO AMEND**. The complaint does not allege that Jonathan Kalista, Edgar Zamora-Martinez, or any person alleged to be an agent or employee of Jack in the Box, Inc. made harmful or offensive contact with the plaintiff's person or did anything that placed the plaintiff in apprehension of such contact.

The demurrer to the third cause of action for false imprisonment is **OVERRULED**. (*Du Lac v. Perma Trans Products, Inc.* (1980) 103 Cal.App.3d 937, 941, overruled on another point in *Hagberg v. Calif. Federal Bank FSB* (2004) 32 Cal.4th 350, 377.) The complaint alleges sufficient facts to state a cause of action for false imprisonment. (Complaint ¶¶ 11 and 51-55.)

The demurrer to the fourth cause of action for libel/slander based on Civil Code section 47, subdivision (b) is **SUSTAINED WITHOUT LEAVE TO AMEND**. (*Hagberg v. Calif. Federal Bank, supra*, at 355 and 361-367.) Jonathan Kalista's report to authorities about the alleged armed robbery is absolutely privileged under Civil Code section 47, subdivision (b). The complaint does not allege any other statement/publication by Jack in the Box, Inc. or an alleged agent or employee of Jack in the Box, Inc. If the Plaintiff wishes to amend the complaint to allege other publications by Jack in the Box, Inc. or its agents or employees, the plaintiff may request a hearing and seek leave to amend at the hearing.

The demurrer to the fifth cause of action for intentional infliction of emotional distress is **OVERRULED**. It cannot be concluded that giving a false report to authorities with the intent of causing someone to be arrested or with reckless disregard of such consequence is not extreme and outrageous conduct.

The demurrer to the sixth cause of action for premises liability is **OVERRULED**. (CACI 1000; 6 Witkin, Summary of Calif. Law (10th ed. 2005) Torts, §§ 1082-1083, pp. 405-407.) The complaint alleges that Jack in the Box, Inc. had possession and control of the premises where the restaurant is located and that Jack in the Box, Inc. negligently managed the operation of the restaurant, causing Plaintiff injury. (Complaint ¶¶ 71-78.)

For the reasons stated above, the demurrer to the seventh cause of action for negligence is also **OVERRULED**.

Plaintiff shall file an amended complaint, if any, by June 14, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Marin v. Home Builders, Inc.**
Case No. CV CV 08-272

Hearing Date: **June 4, 2010** **Department Fourteen** **9:00 a.m.**

Liberty Bell Alarm Company, Inc.'s unopposed motion for good faith settlement determination is **GRANTED**. (Code Civ. Proc., § 877.6.) The Court will sign the order submitted with the moving papers.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Schrang v. Diaz**
 Case No. CV PO 09-3373

Hearing Date: **June 4, 2010** **Department Fourteen** **9:00 a.m.**

The demurrer to complaint is **OVERRULED**. The cases the defendants cite do not support the demurrer. The complaint pleads sufficient facts to state a cause of action for conversion. (5 Witkin, Calif. Procedure (5th ed. 2008) Pleading, §§ 702-705, pp. 118-121.) Additionally, the complaint is not so uncertain that the defendants cannot reasonably respond thereto.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.